

Attachment 3

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9
10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
11 **IN AND FOR THE COUNTY OF MARICOPA**
12

13 ADELA GIBSON, a single person;
14 RICHARD MOORE, a single person,

15 Plaintiffs,

16 v.

Case No: CV2021-014050

COMPLAINT

17 CITY OF MESA only a jural entity;
18 OFFICER J. LAFONTAINE and DOE
19 LAFONTAINE, a married couple;
20 OFFICER A. NAVARRO and DOE
21 NAVARRO, a married couple;
22 OFFICER J. ROZEMA and DOE
23 ROZEMA, a married couple;
24 OFFICER M. CHUEY (#21315) and DOE
25 CHUEY, a married couple;
26 DOE DEFENDANTS 1-10;

27 Defendants.

28 For her Complaint against Defendants City of Mesa, J. LaFontaine, A. Navarro, J. Rozema, M. Chuey, and Doe Defendants 1-10, Plaintiffs Adela Gibson and Richard Moore allege as follows:

PARTIES AND JURISDICTION

1. Plaintiff Adela Gibson is a resident of Maricopa County, Arizona.

1 2. Plaintiff Richard Moore is a resident of Maricopa County, Arizona.

2 3. Defendant City of Mesa is a political subdivision of the State of Arizona.

3 4. Defendant J. LaFontaine (#10736) is an officer with the Mesa Police
4 Department. Officer LaFontaine is a member of the SWAT team, or aided the SWAT
5 team, in the events alleged herein. Officer LaFontaine is trained to manage K-9 officers,
6 including Sjo, the K-9 officer used on September 7, 2020, in Richard's arrest.

7 5. Defendant A. Navarro (#19827) is an officer with the Mesa Police
8 Department. Officer LaFontaine is a member of the SWAT team, or aided the SWAT
9 team, in the events alleged herein.

10 6. Defendant J. Rozema (#15724) is an officer with the Mesa Police
11 Department. Officer Rozema is a member of the SWAT team, or aided the SWAT team,
12 in the events alleged herein.

13 7. Defendant M. Chuey (#21315) is an officer with the Mesa Police
14 Department. Officer Chuey is a member of the SWAT team, or aided the SWAT team, in
15 the events alleged herein.

16 8. Doe LaFontaine, Doe Navarro, Doe Rozema, Doe Chuey are the spouses of
17 Defendants LaFontaine, Navarro, Rozema, and Chuey and are named to bind the marital
18 communities of Defendants LaFontaine, Navarro, Rozema, and Chuey, because the acts
19 of Defendants LaFontaine, Navarro, Rozema, and Chuey were done in benefit and
20 furtherance of their marital communities, if any.

21 9. Defendants Does 1-10 are defendants whose identities are currently
22 unknown, but who are responsible in whole, or in part, for the claims and damages alleged
23 herein. Plaintiffs will move to add the names of the Doe defendants upon discovery of
24 their identities.

25 10. For the purposes of Plaintiffs' state law claims, the Defendants were acting
26 within the course and scope of their employment with the City of Mesa and the Mesa
27 Police Department. The City of Mesa is responsible for the actions of its police officers
28 under the theory of *respondeat superior*.

11. For the purpose of Plaintiffs' federal law claims, the Defendants were acting under the color of state law.

12. Jurisdiction is appropriate in this court as the events alleged herein occurred in Maricopa County, Arizona, and the damages meet or exceed the jurisdictional limits required for the Superior Court.

GENERAL ALLEGATIONS

13. Adela Gibson met her boyfriend, Richard Moore, in 2015. They lived in her apartment until late-2016 when Richard received title to a mobile home from his family. In 2018, Richard transferred the title of the mobile home to Adela's name.

14. In mid-2019, Richard began to show increasing anger toward Adela. His anger wasn't physical, and he did not become physically abusive. But his tone and demeanor became mean toward her – and others.

15. After a particularly rough spell where Richard was verbally abusive, Adela told Richard that he had to leave. When Richard refused, Adela simply left their home, drove to the Walmart that was a block away, and called the police.

16. In response, the Mesa Police Department went to her home to talk to Richard. A short time later, officers had convinced Richard to come out of the home and transported to a medical facility that could treat Richard's mental health conditions.

17. Adela then secured an order of protection and had it served on Richard. The order of protection expired a year later – several months before the events alleged herein.

18. The property manager of the mobile home park had Richard trespass from the property.

19. As a result, when Richard left the mental health facility, he was homeless and without means for providing shelter, food, or medication that he needed to balance his mental health conditions.

20. However, when he is on medications, Richard functions normally.

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THE CALL FOR HELP ON SEPTEMBER 7, 2020

21. Although he was homeless, Richard and Adela would meet at various locations in Mesa to spend time together.

22. On occasion, Richard would go by her home to see her and her dog and take the dog for walks.

23. Like many who are homeless, Richard would occasionally relocate where he would stay and move about. So, over the months he would disappear for some time before returning. But Richard's demeanor was normal if he had his medications.

24. In or around August 2020, Richard was away from Adela's home. When he got back in touch with Adela in the first week of September 2020, he was off his medications.

25. Adela pled with him to get back to Community Bridges for medical attention. Adela even made calls to Community Bridges and the Crisis lines, but they refused to talk to her because she was not married to Richard.

26. Richard refused to go back to Community Bridges voluntarily and became angry toward Adela much like he had the year before.

27. On September 7, 2020, Adela left her home for the grocery store. When she returned, Richard was standing on the porch of the trailer and refused to leave. Adela could see that he was in the middle of another mental health break.

28. As she did previously, she simply left the home, went to Walmart, and called the police who dispatched Officers Shumway and Bickle and to meet her at the Walmart.

29. She explained to Officers Shumway and Bickle that Richard was at her home, refused to leave, and she requested that they help him get medical treatment as they had before.

30. She explained to Officers Shumway and Bickle that Richard was not dangerous and there were no guns in the home.

1 31. She explained that Richard had done this before and was acting the same
2 way.

3 32. She told Officers Shumway and Bickle that there had been an order of
4 protection previously, but it had expired.

5 33. She told Officers Shumway and Bickle that Richard does not have a
6 personality for violence but that he is loud and insulting.

7 34. Officers Shumway and Bickle did not ask permission to enter her home and
8 Adela did not offer Officers Shumway and Bickle permission to enter the home.

9 35. She explained that her pets were in the home, and she feared for them.

10 36. At Officers Shumway and Bickle's request, Adela drew a map of the inside
11 of their home so that they would know the layout of the home.

12 37. Officers Shumway and Bickle kept Adela away from her home as other
13 officers, including the SWAT team, surrounded the mobile home.

14 38. Mesa Police negotiators and SWAT team members made contact with
15 Richard and talked with him several times. Officers assessed him as having mental health
16 issues and delusions, but the officers did not see any guns or other weapons in his hands.

17 39. Officers were aware that Adela had stated there were no weapons in the home
18 and that Richard was not armed. The officers at Adela's house were also aware that the
19 order of protection that Adela had secured the year before had expired and that there was
20 no current order of protection.

21 40. The situation at Adela's home began to stretch out for hours. At the Walmart,
22 Officers Shumway and Bickle asked Adela to draw yet *another* map of the inside of the
23 home.

24 41. Adela grew concerned and anxious for Richard. She believed that the
25 situation at her home was escalating, and she offered to help by going to the home to talk
26 to Richard.

1 42. Officers Shumway and Bickle refused to let her go, requiring Adela stay with
2 them at the Walmart parking lot.

3 43. Adela became agitated with Officers Shumway and Bickle who were
4 refusing to let her return to her home and were asking for another map of the interior of her
5 home. One of the officers flipped on his body worn camera and told her that he was doing
6 that because he sensed that she "might be trouble."

7 44. Feeling duress from the officer who told her that she might be trouble, Adela
8 complied with the officer's demand for another map.

9 45. Shortly thereafter, Adela heard explosions coming from the direction of her
10 home only a couple of blocks away.

11 46. A moment or so later, there were more explosions.

12 47. The explosions she heard were concussion/stun "grenades" and tear gas/OC
13 spray cannisters being shot through walls, windows, and doors of the home.

14 48. The amount of gas contained in the gas cannisters that were shot through the
15 walls, doors, and windows of Adela's home was at least enough to cover ten (10) times the
16 square footage of her small home, if not more.

17 49. A few minutes later, Officers Shumway and Bickle told her that Richard was
18 in custody and that her pets were safe. Officers Shumway and Bickle told Adela that she
19 was not permitted to return to her home for several more hours as police wrapped up their
20 investigation.

21 50. When Adela did return to her home, she found that the SWAT team,
22 including Defendants LaFontaine, Navarro, Rozema, Chuey, and Doe Defendants had left
23 the place in shambles.

24 51. The SWAT team, including Defendants LaFontaine, Navarro, Rozema,
25 Chuey, and Doe Defendants shot through or smashed out every glass window and door.
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1 52. The SWAT team, including Defendants LaFontaine, Navarro, Rozema,
2 Chuey, and Doe Defendants destroyed the entire glass-sliding door to the home, leaving
3 the house completely open and exposed.

4 53. The SWAT team, including Defendants LaFontaine, Navarro, Rozema,
5 Chuey, and Doe Defendants threw Adela's personal items onto the floor of her home.

6 54. The SWAT team, including Defendants LaFontaine, Navarro, Rozema,
7 Chuey, and Doe Defendants ransacked kitchen cabinets and threw items from her
8 countertops onto the floor.

9 55. The SWAT team, including Defendants LaFontaine, Navarro, Rozema,
10 Chuey, and Doe Defendants opened and searched spaces where no person could hide and
11 tossed the contents of these spaces on the floor.

12 56. Adela has a home-based, small business locating, buying, and selling DVDs
13 and videos. The SWAT team, including Defendants LaFontaine, Navarro, Rozema, Chuey,
14 and Doe Defendants pulled down the bookshelves that held her entire DVD inventory.
15 DVDs were strewn about the floor – some of which were stepped on and destroyed.

16 57. The SWAT team, including Defendants LaFontaine, Navarro, Rozema,
17 Chuey, and Doe Defendants smashed out a sliding glass door in the shower.

18 58. The ceiling in the bathroom was damaged by flying gas cannisters.

19 59. Flooring was scorched where several gas cannisters landed and became
20 lodged under objects.

21 60. Ceilings throughout the home had damage from the tear gas/OC spray and
22 the walls, curtains, carpets, and bedding were saturated with tear gas/OC spray.

23 61. Adela was unable to breathe the air inside the home without coughing and
24 gagging for several weeks after Richard was arrested. Although the smell and flavor of the
25 tear gas/OC spray has dissipated, it has taken months of scrubbing and washing to reduce
26 the effects of the tear gas/OC spray.

1 62. Due to the damage from the SWAT team, including Defendants LaFontaine,
2 Navarro, Rozema, Chuey, and Doe Defendants' use of force and entry to her home, Adela's
3 home was wide open to the elements. Because the doors were missing, her personal and
4 business property were at risk for theft or destruction.

5 63. After assessing the damage from the events of September 7, 2020, the City
6 of Mesa called a service to board up her home. Even though the house is boarded up, it is
7 not sealed. The home still has drafts from outside in the winter and cannot stay cool during
8 summer with air conditioning escaping. Insects and water can get into the home.

9 **ARRESTING RICHARD MOORE**

10 64. As described herein, the Mesa Police Department had previously had
11 interactions with Richard. Those interactions were documented and available to the
12 dispatchers and officers involved on September 7, 2020. The Mesa Police Department and
13 its officers knew that Richard was not violent or dangerous.

14 65. In fact, in prior incidents, Richard had been completely compliant with
15 officers and had received mental health and medical assistance he needed.

16 66. On September 7, 2020, when Adela came home from the grocery store
17 Richard was on the front porch. He was loud and insulting to Adela, prompting her to leave
18 the home and call the police.

19 67. When she contacted the police, Adela requested that the police locate
20 Richard and assist him in getting medical help as they had in the past.

21 68. The Mesa Police Department and its officers knew from Officers Shumway
22 and Bickle's interview of Adela at the Walmart, that Richard was having mental health
23 issues.

24 69. Adela told Officers Shumway and Bickle that Richard did not have weapons,
25 that he had not physically injured her, and was simply not leaving the home as she had
26 asked.

1 70. The Mesa Police Department, via Officers Shumway and Bickle, knew that
2 there was an expired order of protection and that the only possible crime being committed
3 by Richard was trespassing based on the trailer park management's trespassing request
4 from the prior years.

5 71. Richard was not violent and was not suspected of violence or a violent crime.
6 Richard was not in flight from officers and was responsive to officers when they knocked
7 on the door to the home.

8 72. When the SWAT team, including Defendants LaFontaine, Navarro, Rozema,
9 Chuey, and Doe Defendants, responded to the call knocked on the door to the home,
10 Richard did go to the sliding glass door to talk to them. Officers noted that Richard was
11 clearly having a mental health incident as evidenced by his delusional speech.

12 73. But Richard did not go with the officers as they requested. Instead, he simply
13 told the officers he chose not go and closed the sliding glass door behind him.

14 74. A few minutes after he closed the sliding door, the SWAT team, including
15 Defendants LaFontaine, Navarro, Rozema, Chuey, and Doe Defendants, began using a
16 bullhorn, ordering Richard to come outside.

17 75. Richard once again came to the door. As he approached, the officers ordered
18 Richard to put his hands up – and he did.

19 76. The officers did not issue any commands to Richard and did not tell him that
20 he was under arrest or going to be taken into custody.

21 77. Richard did not have any weapons in his hands, nor did he threaten the
22 officers.

23 78. By all accounts, Richard complied with their request to open the door.

24 79. As he did, Defendant Chuey shot Richard at very close range with a rubber
25 bullet.

26 80. The shot was so loud and so close that Richard believed he had been shot by
27 a real bullet.
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1 81. Richard recoiled from the rubber bullet and closed the door behind him.

2 82. Seconds later Defendants Navarro, Rozema, Chuey, and other members of
3 the SWAT team whose identities are currently unknown, began breaking every window by
4 shooting gas cannisters into the house.

5 83. After the gas cannisters were deployed in the home, Defendant Navarro saw
6 Richard through the windows of the home. Defendant Navarro saw Richard run to the
7 opposite side of the trailer looking for a place to hide and avoid the gas.

8 84. Despite knowing that the gas was affecting Richard, Defendant Navarro
9 decided to break windows on the east side of the home in order to deploy even more tear
10 gas/OC spray.

11 85. A decision was made by someone on the SWAT team to enter the home.
12 Defendant Navarro used a ballistic 12-gauge shotgun and a manual tool to obliterate the
13 sliding glass door to enter the home.

14 86. Richard couldn't breathe due to the gas that had been shot into the home. But
15 he remembered that there was an air vent on the floor in the bedroom. He ran to the
16 bedroom, pulled the vent cover off, and stuck his face in the vent.

17 87. Keeping his face in the air vent, Richard was lying face down. He covered
18 his head with towels and laundry to stop the gas from getting to his face.

19 88. SWAT team officers, including Defendants Navarro, Rozema, Chuey, and
20 Doe Defendants acknowledged that Richard was lying face down on the floor with his head
21 and body covered. In fact, they all knew that only Richard's feet were exposed.

22 89. SWAT team officers, including Defendants Navarro, Rozema, Chuey and
23 Doe Defendants, began shooting Richard with rubber bullets or bean bag rounds. They did
24 so knowing that Richard was mostly covered in towels and laundry and was not armed or
25 a threat to their safety.
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1 90. SWAT team officers and commanders, including LaFontaine, Rozema,
2 Chuey, and Doe Defendants, failed to intervene to stop other officers from pelting Richard
3 – who was lying motionless, face down, on the floor – with bean bag/rubber bullet rounds.

4 91. Having been shot with a rubber bullet in his chest, unable to breathe due to
5 tear gas/OC spray and having been shot again by rubber bullets as he lied face down on the
6 floor under towels and laundry, Richard continued to lay still.

7 92. Instead of approaching Richard to cuff him, SWAT team officers, including
8 Doe Defendants, then commanded Defendant LaFontaine and K-9 officer Sjo into the
9 room.

10 93. Officer LaFontaine yelled multiple commands to Sjo, causing Sjo to attack
11 Richard's exposed legs.

12 94. Sjo began to bite and pull Richard, who had been lying face down on the
13 floor, across the room.

14 95. As Richard struggled with the dog, SWAT team officers, including
15 Defendants Navarro, Rozema, and Doe Defendants, started tasing Richard as he remained
16 covered.

17 96. SWAT team officers and commanders, including Defendants Navarro,
18 Rozema, Chuey and Doe Defendants, failed to intervene to stop Defendant LaFontaine
19 from using Sjo, a police K-9 officer, to repeatedly bite and pull Richard – who was lying
20 face down and motionless on the floor prior to Sjo's first bites.

21 97. Defendant LaFontaine commanded Sjo to begin pulling Richard toward him.
22 These commands required Sjo to lock onto Richard's leg and pull Richard over carpet and
23 clothing that was covering the floor. If Sjo lost a grip on Richard, Sjo would lock onto
24 Richard's leg again and pull.

25 98. As a result, Richard began to push away from the air vent and tried to get the
26 dog off of him.

1 99. It was then that multiple SWAT team officers, including Defendants
2 LaFontaine, Navarro, Rozema, and Doe Defendants, tased Richard and continued to do so
3 until they could get him locked in handcuffs.

4 100. SWAT team officers and commanders, including Defendants LaFontaine,
5 Navarro, Rozema, and Doe Defendants, failed to intervene to stop officers from tasing
6 Richard, who had been lying face down, motionless on the floor (until Sjo took hold of his
7 leg), from tasing Richard.

8 101. Richard endured significant pain and trauma as a result of the bean
9 bag/rubber bullet rounds, dog bites, and taser contacts.

10 102. Richard was arrested and taken to the hospital for treatment. He was then
11 taken to Community Bridges for mental health evaluation and care.

12 103. Charges against Richard were dropped.

13 104. But upon information and belief, the charges were refiled after Richard filed
14 a notice of claim with the City of Mesa.

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16 **CLAIMS FOR RELIEF**

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18 **COUNT ONE**

19 **EXCESSIVE FORCE – 42 U.S.C. § 1983**

20 **(Doe Defendants, LaFontaine, Navarro, Rozema, and Chuey)**

21 105. Plaintiffs restate the allegations contained above as if fully restated herein.

22 106. The Fourth Amendment to the United States Constitution, which applies to
23 the Defendants pursuant to the Due Process Clause of the Fourteenth Amendment forbids
24 one who acts under the color of state law from unreasonable search and seizure in violation
25 of a person's security and interests.

26 107. At all times, Defendants LaFontaine, Navarro, Rozema, Chuey and Doe
27 Defendants were acting under the color of state law.

28 108. Plaintiffs' right to be free from unreasonable searches and seizures was well
established at the time of the events alleged in the Complaint.

1 109. Excessive or unnecessary property destruction during a search violates the
2 Fourth Amendment. It was wholly excessive and unnecessary to use shotgun/cannister
3 launchers to destroy every window and door in Adela's home. It was wholly excessive
4 and unnecessary to use more than ten (10) times the tear gas/OC spray necessary for the
5 square footage of the home. It was wholly excessive and unnecessary to destroy Adela's
6 personal and business property, pulling shelves filled with DVDs and videos over, opening
7 and ransacking cabinets and other spaces where a human cannot fit, throwing objects that
8 were sitting on countertops onto the ground, destroying a bathroom shower sliding door,
9 damaging the ceilings and floors of Adela's home, and generally making the home
10 uninhabitable due to the residual tear gas and pepper spray.

11 110. Each of the foregoing interfered with Adela's possessory interest in her
12 personal and business property.

13 111. Defendants LaFontaine, Navarro, Rozema, Chuey and Doe Defendants
14 knew that by destroying Adela's doors, windows, bathroom shower doors, personal and
15 business property, outer walls to the home, and by destroying the habitability of Adela's
16 home, they exceeded the scope of any arrest warrant they may have been issued and they
17 were violating Adela's constitutional rights.

18 112. As alleged herein, Defendants LaFontaine, Navarro, Rozema, Chuey and
19 Doe Defendants violated Adela's constitutional rights and she has suffered damages in an
20 amount to be proven at trial.

21 113. Likewise, it violates the Fourth Amendment to utilize excessive force in the
22 arrest of a suspect.

23 114. Defendants LaFontaine, Navarro, Rozema, Chuey and Doe Defendants
24 knew that Richard was unarmed and that he was not known as a dangerous person. They
25 knew that Richard was not wanted for any serious crime and the only crime that he was
26 suspected of was trespassing in the trailer park. Defendants LaFontaine, Navarro, Rozema,
27 Chuey and Doe Defendants spoke with Richard multiple times that evening and each
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1 defendant knew that Richard was mentally ill or, at a minimum, suffering a mental break.
2 Each of the named defendants knew that Richard was suffering from delusions.

3 115. Despite this knowledge, Defendants LaFontaine, Navarro, Rozema, Chuey
4 and Doe Defendants used excessive force when they shot Richard with a rubber bullet
5 without provocation or warning, caused ten times the amount of tear gas/OC spray
6 necessary for the square footage of the trailer to be fired into the home, fired multiple
7 rubber bullets at Richard and hitting him, used a K-9 officer to bite and pull Richard
8 multiple times causing significant pain and disfiguration, tasered him multiple times, all
9 after finding Richard lying face down on the floor with his head and upper body covered
10 with towels and laundry.

11 116. At the time that Defendants LaFontaine, Navarro, Rozema, Chuey and Doe
12 Defendants found Richard in the bedroom, Richard did not pose a realistic threat to them.
13 Richard's head, arms, and upper body were covered, and Richard was lying face down
14 with his face in an air conditioning vent.

15 117. Defendants LaFontaine, Navarro, Rozema, Chuey and Doe Defendants have
16 violated Richard's Fourth Amendment rights. Richard has suffered physical and
17 psychological damages in an amount to be proven at trial.

18 118. The acts of Defendants LaFontaine, Navarro, Rozema, Chuey and Doe
19 Defendants were willful, wanton, reckless, malicious, oppressive and/or done with a
20 conscious or reckless disregard for Plaintiffs' rights. Plaintiffs, therefore, pray for an
21 award of punitive and exemplary damages against these individual defendants in an
22 amount sufficient to deter such conduct in the future.

23 119. Pursuant to 42 U.S.C. § 1988 and other applicable law, Plaintiffs are entitled
24 to an award of their reasonable attorneys' fees and costs.

25 **COUNT TWO**
26 **FAILURE TO INTERVENE – 42 U.S.C. § 1983**
27 **(Doe Defendants, LaFontaine, Navarro, Rozema, and Chuey)**

28 120. Plaintiffs restate the allegations contained above as if fully restated herein.

1 121. Defendants LaFontaine, Navarro, Rozema, Chuey and Doe Defendants
2 were all acting under the color of state law.

3 122. Law enforcement officers who have a realistic opportunity to prevent a
4 fellow officer from violating a citizen's constitutional rights have a duty to intervene to
5 protect the victim from injury from unconstitutional retaliation, use of force, or violation
6 of due process of law.

7 123. As alleged herein, Defendants LaFontaine, Navarro, Rozema, Chuey and
8 Doe Defendants knew that Richard was alone in the home. They knew he did not have
9 weapons and they knew that he was not violent. None of them attempted to intervene to
10 prevent ten times the amount of tear gas/OC spray from being shot into the house or
11 prevent the others from shooting holes in Adela's trailer's walls, or shooting through every
12 glass window and door, or shattering her sliding door in the shower. Instead, each of the
13 Defendants stood by and let the other officers continue their excessive use of force against
14 Adela's trailer.

15 124. As alleged herein, Defendants LaFontaine, Navarro, Rozema, Chuey and
16 Doe Defendants were each aware that Richard was unarmed and that he was not known
17 as a dangerous person. They knew that Richard was not wanted for any serious crime and
18 the only crime that he was suspected of was trespassing in the trailer park. Defendants
19 LaFontaine, Navarro, Rozema, Chuey and Doe Defendants spoke with Richard multiple
20 times that evening and each defendant knew that Richard was mentally ill or, at a
21 minimum, suffering a mental break. Each of the named defendants knew that Richard was
22 suffering from delusions.

23 125. Defendants LaFontaine, Navarro, Rozema, Chuey and Doe Defendants
24 failed to intervene to prevent the others from violating Richard's constitutional right to be
25 free from excessive force during an arrest.

26 126. For instance, Defendants LaFontaine, Navarro, Rozema, and Doe
27 Defendants knew that Richard was not armed but none of them moved to prevent
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1 Defendant Chuey from shooting Richard with a rubber bullet at close range without
2 warning.

3 127. Defendants Navarro, Rozema, Chuey and Doe Defendants knew that
4 Richard was not a threat to them as he was lying face down on the ground, covered by
5 towels and other materials. Yet they did not attempt to intervene to prevent Defendant
6 LaFontaine from ordering Sjo to attack Richard and bite his leg continually while
7 attempting to pull Richard closer to them.

8 128. Defendants LaFontaine, Navarro, Chuey and Doe Defendants knew that
9 Richard was unarmed, not considered dangerous, was not fleeing from officers, and was
10 lying face down on the ground, covered by towels and other materials. Yet they did not
11 attempt to intervene to prevent Defendant Rozema from tasing Richard while Richard was
12 being bitten by Sjo.

13 129. Defendants LaFontaine, Rozema, Chuey and Doe Defendants knew that
14 Richard was unarmed, not considered dangerous, was not fleeing from officers, and
15 complying with officers' instructions. Yet they did not attempt to intervene to prevent
16 Defendant Navarro from using additional tear gas/CS spray in the trailer home, shooting
17 through sliding glass doors with a 12-gauge shotgun, or using manual tools to rip open
18 doorways and walls.

19 130. The events alleged herein lasted several hours and each defendant had a
20 reasonable opportunity to intervene to prevent harm.

21 131. Because of the failure of Defendants LaFontaine, Navarro, Rozema, Chuey
22 and Doe Defendants to intervene to prevent additional constitutional harms, Plaintiffs
23 have suffered damages in an amount to be proven at trial.

24 132. The acts of Defendants LaFontaine, Navarro, Rozema, Chuey and Doe
25 Defendants were willful, wanton, reckless, malicious, oppressive and/or done with a
26 conscious or reckless disregard for Plaintiffs' rights. Plaintiffs, therefore, pray for an
27 award of punitive and exemplary damages against these individual defendants in an
28 amount sufficient to deter such conduct in the future.

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COUNT THREE
NEGLIGENCE
(City of Mesa, Doe Defendants, LaFontaine, Navarro, Rozema, and Chuey)

133. Plaintiffs restate the allegations contained above as if fully restated herein.

134. Each of the Defendants owed a duty of care to Plaintiffs to act reasonably to protect Plaintiffs' constitutional rights and to prevent injury to Adela's personal and business property and to Richard's bodily integrity.

135. As alleged herein, Defendants LaFontaine, Navarro, Rozema, Chuey and Doe Defendants have breached their respective duties to Plaintiffs.

136. As a result of Defendants LaFontaine, Navarro, Rozema, Chuey and Doe Defendants' breach of their duty of care, Plaintiffs have suffered harm in amounts to be proven at trial.

137. As their employer, the City of Mesa is vicariously liable for the acts of its employees and agents.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that the Court enter judgment against the Defendants and in for Plaintiffs as follows:

- A. For actual damages in an amount to be proven at trial;
- B. For compensatory, consequential, and incidental damages in an amount to be proven at trial;
- C. For punitive and exemplary damages against Defendants LaFontaine, Navarro, Rozema, Chuey and Doe Defendants in an amount to punish the wrongful conduct alleged herein and to deter such conduct in the future for claims arising from violations of federal law only;
- D. Awarding Plaintiffs pre- and post-judgment interest on the foregoing amounts at the maximum rate recoverable by law;

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E. For Plaintiffs' incurred costs, including attorneys' fees and court costs,
pursuant to 42 U.S.C. § 1988 and other applicable law;

F. For other such relief as this Court may deem proper and just.

DATED this 7th day of September 2021.

LAW OFFICE OF SCOTT GRIFFITHS

/s/ Scott Griffiths
By: Scott Griffiths
Attorney for Plaintiffs